

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD A. WILLIAMS,

Plaintiff,

V.

CIVIL ACTION NO. 17-cv-2641

JEFF SESSIONS,

Attorney General of the United States,

THOMAS E. BRANDON,

Acting Director, Bureau of Alcohol,

Tobacco, Firearms, and Explosives,

CHRISTOPHER WRAY,

Director, Federal Bureau of Investigation, and

UNITED STATES OF AMERICA,

Defendants.

ORDER

AND NOW, this day of , 2017, upon

consideration of Defendants' Unopposed Motion for an Extension of Time to Respond to

Plaintiff's Complaint, it is hereby

ORDERED

that Defendants' motion for a 30-day extension of time to respond to the Complaint is granted

and Defendants shall have up to and including September 14, 2017 to answer, move or otherwise

respond to the Plaintiff's Complaint.

BY THE COURT:

HONORABLE ROBERT F. KELLY

Senior Judge, United States District Court

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Plaintiff,

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CIVIL ACTION NO. 17-cv-2641

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Attorney General of the United States,

THOMAS E. BRANDON,

Acting Director, Bureau of Alcohol,

Tobacco, Firearms, and Explosives,

CHRISTOPHER WRAY,

Director, Federal Bureau of Investigation, and

UNITED STATES OF AMERICA,

Defendants.

**DEFENDANTS' UNOPPOSED MOTION FOR AN
EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S COMPLAINT**

Defendants, Jefferson B. Sessions, III, Attorney General of the United States of America, Thomas E. Brandon, Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Christopher Wray, Director, Federal Bureau of Investigation, and the United States of America, submit this unopposed motion for a 30-day extension of time, or up to and including September 14, 2017, to answer, move, or otherwise respond to the Plaintiff's Complaint.¹

Plaintiff, Edward A. Williams, has brought this declaratory action against the various federal defendants claiming that they have violated his rights under the Second Amendment by

¹ Cristopher Wray became the Director of the FBI on August 2, 2017 and replaced defendant, Andrew McCabe, the Acting Director of the FBI, as the head of the agency. Under Rule 25(d) of the Federal Rules of Civil Procedure, when a public officer who is a party to a case in an official capacity ceases to hold office, the officer's successor is automatically substituted as the party. Fed. R. Civ. P. 25(d). Rule 26(d) provides that later proceedings should be in the substituted party's name. *Id.*

prohibiting him from possessing a firearm because of a prior misdemeanor conviction for driving under the influence (“DUI”).

Plaintiff claims that he was arrested for his first DUI in 2001, which was disposed of pursuant to Pennsylvania’s Accelerated Rehabilitative Disposition (“ARD”) program. Three years later, Plaintiff was convicted of a second DUI. This second conviction was graded as a misdemeanor of the first degree, punishable by up to five years in prison. Plaintiff alleges that he was placed under house arrest with electronic monitoring for 90 days, ordered to pay a \$1,500 fine and court costs, and required to undergo certain drug and alcohol treatment. Because of his misdemeanor conviction was punishable by more than two years in prison, Plaintiff alleges that he is barred from possessing a firearm under 18 U.S.C. § 922(g)(1) and he seeks a declaratory judgment that such prohibition violates his rights under the Second Amendment.

Following service of the Complaint, the U.S. Attorney’s Office promptly forwarded the Complaint to counsel for the various agency defendants. Counsel in the U.S. Attorney’s Office has begun to review the file in the case and research legal issues. The U.S. Attorney’s Office, however, needs additional time to research the legal issues raised by Plaintiff’s Complaint, consult and coordinate with Agency counsel and the U.S. Department of Justice, gather information concerning Plaintiff’s claims, and prepare response to the Complaint, including a possible motion to dismiss. Defendants request this extension of time to allow them a reasonable opportunity to prepare their response to Plaintiff’s Complaint.

Plaintiff has advised Defendants’ counsel that he has no objection to this motion for an extension of time. Defendants have not previously requested any extension of time to respond to Plaintiff’s Complaint.

The basis for this motion is more fully set forth in the Defendants' accompanying memorandum of law.

WHEREFORE, Defendants respectfully request that their unopposed motion for a 30-day extension of time be granted and that they have up to, and including September 14, 2017 to answer, move, or otherwise respond to the Plaintiff's Complaint.

Respectfully submitted,

LOUIS D. LAPPEN
Acting United States Attorney

/s/ Margaret L. Hutchinson
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

/s/ Richard Mentzinger, Jr.
RICHARD MENTZINGER, JR.
Assistant United States Attorney

Dated: August 8, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD A. WILLIAMS,

Plaintiff,

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CIVIL ACTION NO. 17-cv-2641

JEFF SESSIONS,

Attorney General of the United States,

THOMAS E. BRANDON,

Acting Director, Bureau of Alcohol,

Tobacco, Firearms, and Explosives,

CHRISTOPHER WRAY,

Director, Federal Bureau of Investigation, and

UNITED STATES OF AMERICA,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' UNOPPOSED MOTION FOR AN
EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S COMPLAINT**

Defendants, Jefferson B. Sessions, III, Attorney General of the United States of America, Thomas E. Brandon, Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Christopher Wray, Director, Federal Bureau of Investigation, and the United States of America, submit this memorandum of law in support of their unopposed motion for a 30-day extension of time, or up to and including September 14, 2017, to answer, move, or otherwise respond to the Plaintiff's Complaint.

Plaintiff claims that he was arrested for his first DUI in 2001, which was disposed of pursuant to Pennsylvania's Accelerated Rehabilitative Disposition ("ARD") program. Compl., ¶ 19. Three years later, Plaintiff was convicted of a second DUI. Compl., ¶ 20 and Exhibit B. This second DUI was graded as a misdemeanor of the first degree, punishable by up to five years

in prison pursuant to 18 Pa. C.S. § 106(b)(6). *Id.* Plaintiff alleges that he was placed under house arrest with electronic monitoring for 90 days, ordered to pay a \$1,500 fine and court costs, and required to undergo certain drug and alcohol treatment. *Id.* at ¶ 22.

Plaintiff claims that in late December 2014, he applied for, and was denied, a license to carry a firearm. Compl., ¶ 25. The Pennsylvania State Police allegedly advised Plaintiff that the Federal Bureau of Investigation had denied his request for a permit and that Plaintiff was barred from possessing a firearm under 18 U.S.C. § 922(g)(1) as a result of his 2005 DUI conviction. *Id.* at ¶ 26. Plaintiff claims that the statutory prohibition on him obtaining a firearm under 18 U.S.C. § 922(g)(1), based on his conviction for a DUI misdemeanor, violates his rights under the Second Amendment. *Id.* at ¶¶ 54-60. Plaintiff seeks to bring an as-applied challenge to his firearms disability as set forth in *Binderup v. Attorney General*, 836 F.3d 336 (3d Cir. 2016).

After receiving a copy of the Plaintiff's Complaint, the U.S. Attorney's Office promptly forwarded the Complaint to the counsel for the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Counsel at the U.S. Attorney's Office has begun to review the case and research certain legal issues. The U.S. Attorney's Office, however, needs additional time to research the various legal issues raised by the Plaintiff's Complaint, consult and coordinate with Agency counsel and the U.S. Department of Justice, gather further information about Plaintiff's claims, and prepare response to the Plaintiff's Complaint, including a possible motion to dismiss. Defendants request this 30-day extension of time to allow them a reasonable opportunity to prepare their response to Plaintiff's Complaint.

Plaintiff's counsel has advised Defendants' counsel that he has no objection to Defendants' request for an extension of time. Defendants have not previously requested any

extension of time to respond to Plaintiff's Complaint and Defendants do not believe that this extension of time will prejudice any party in this case.

CONCLUSION

For all the reasons set forth above, Defendants respectfully request that the Court grant their unopposed motion for a 30-day extension of time, or up to and including September 14, 2017, to answer, move or otherwise respond to Plaintiff's Complaint.

Respectfully submitted,

LOUIS D. LAPPEN
Acting United States Attorney

/s/ Margaret L. Hutchinson

MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

/s/ Richard Mentzinger, Jr.

RICHARD MENTZINGER, JR.
Assistant United States Attorney

Dated: August 8, 2017

CERTIFICATE OF SERVICE

I, Richard Mentzinger, Jr., hereby certify that on the 8th day of August, 2017, I caused a copy of the foregoing Defendants' Unopposed Motion for an Extension of Time to Respond to Plaintiff's Complaint to be served by ECF and first class mail, postage prepaid, upon:

Adam Kraut, Esq.
Joshua Price, Esq.
Prince Law Offices, P.C.
646 Lenape Road
Bechtelsville, PA 19505

/s/ Richard Mentzinger, Jr.
RICHARD MENTZINGER, JR.
Assistant United States Attorney